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Attorneys for the Executive Secretary

BEFORE THE UTAH AIR QUALITY BOARD

SEVIER COUNTY CITIZENS FOR CLEAN)	In the matter of: Sevier Power Company
AIR AND WATER,)	Power Plant; Case No.: DAQE-AN2529001-
)	04
Petitioner,)	
)	
and)	
)	
SEVIER POWER COMPANY; and the)	MOTION TO COMPEL DISCOVERY
)	
EXECUTIVE SECRETARY OF THE UTAH)	
)	
AIR QUALITY BOARD,)	
)	
Respondents)	
)	
)	
)	

Pursuant to the Utah Administrative Procedures Act and Rule 37 of the Utah Rules of Civil Procedure, the Executive Secretary hereby requests that the Board issue an order compelling the Sevier County Citizens for Clean Air and Water (Sevier County Citizens or SCC) to answer the interrogatories served upon SCC by the Executive Secretary on August 23, 2005 and to produce for inspection and copying all documents and other things described in the request for production served upon SCC by the Executive Secretary on August 23, 2005. The

reasons, including supporting authorities, for this motion are set forth in an accompanying memorandum filed this date by the Executive Secretary.

Counsel for the Executive Secretary hereby certifies, pursuant to Rule 37(a)(2)(B), Utah Rules of Civil Procedure, that he has conferred with James Kennon, President of SCC, in an effort to secure the information and materials without Board action. None of the requested discovery has been produced, with the exception of a ring binder of newspaper and journal articles received from SCC on this date.

Dated this 3rd day of October, 2005

A handwritten signature in dark ink, appearing to read "Richard K. Rathbun", is written over a horizontal line.

RICHARD K. RATHBUN
CHRISTIAN C. STEPHENS
Assistant Attorneys General

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BEFORE THE UTAH AIR QUALITY BOARD

SEVIER COUNTY CITIZENS FOR CLEAN

AIR AND WATER,

Petitioner,

and

SEVIER POWER COMPANY; and the

EXECUTIVE SECRETARY OF THE UTAH

AIR QUALITY BOARD,

Respondents

In the matter of: Sevier Power Company
Power Plant; Case No.: DAQE-AN2529001-
04

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY

In support of his motion to compel discovery, the Executive Secretary submits the following memorandum of reasons and authorities.

INTRODUCTION

The Executive Secretary served interrogatories and requests for production on Sevier County Citizens (SCC) on August 23, 2005. Neither set of discovery requests has been answered, with the exception of the production of a ring binder of documents mailed by SCC and received by undersigned counsel on October 3, 2005.

ARGUMENT

The purpose of discovery is to facilitate a fair hearing with full disclosure of all relevant testimony and evidence. *Roundy v. Staley*, 984 P.2d 404 (UT App 1999). In order to prepare for a hearing on SCC's Request for Agency action, the Executive Secretary served the interrogatories and requests for production on August 23, 2005, seeking identification and production of witnesses, documents and other relevant evidence. Copies of the interrogatories and requests for production are attached hereto as Exhibits 1 and 2, respectively.

As of the date of filing of this motion, the Executive Secretary has received no answers to interrogatories from SCC, and has received only a single ring-binder of documents (less than one inch thick) from SCC. The latter appears to consist of general newspaper and journal articles on a variety of topics, but bears no identifying description, labeling or organization corresponding with the categories of documents and things described in the Executive Secretary's request.

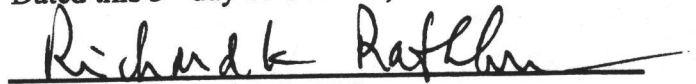
Rule 37, Utah Rules of Civil Procedure, provides that since SCC has failed to answer interrogatories submitted under Rule 33, and has failed to produce documents and other things requested under Rule 34, the Executive Secretary is entitled to an order compelling SCC to fully answer and satisfy the interrogatories and requests for production. Rule 37 further provides that, should SCC fail to comply with a board order compelling discovery, appropriate sanctions may be imposed, including dismissal of the action, the striking of claims and defenses, the exclusion of evidence, and other measures.

CONCLUSION

SCC has failed to fully satisfy the discovery requests submitted by the Executive Secretary in this matter. The Executive Secretary therefore asks that the Board issue an order, compelling full and timely disclosures by SCC to the Executive Secretary's interrogatories (Exhibit 1) and requests for production (Exhibit 2) within a deadline period to be determined by the Board. In the absence of full compliance by SCC with any such Board order, the Executive

Secretary will follow this motion to compel discovery with a request for sanctions, including dismissal of these administrative proceedings.

Dated this 3rd day of October, 2005

A handwritten signature in black ink, appearing to read "Richard K. Rathbun", written over a horizontal line.

RICHARD K. RATHBUN
CHRISTIAN C. STEPHENS
Assistant Attorneys General

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing Motion to Compel Discovery and supporting memorandum was served on the persons listed below on this 3rd day of October, 2005, by U. S. Mail postage prepaid.

James Kennon
Sevier County Citizens for
Clean Air and Water
146 North Main Street, Suite 27
P. O. Box 182
Richfield, UT 84701

Fred Finlinson
Finlinson & Finlinson
11955 Lehi-Fairfield Road
Saratoga Springs, UT 84043

Joro Walker
Sean Phelan
Western Resource Advocates
425 East 100 South
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BEFORE THE UTAH AIR QUALITY BOARD

SEVIER COUNTY CITIZENS FOR CLEAN
 AIR AND WATER,

Petitioner,

and

SEVIER POWER COMPANY; and the
 EXECUTIVE SECRETARY OF THE UTAH
 AIR QUALITY BOARD,

Respondent

In the matter of: Sevier Power Company
 Power Plant; Case No.: DAQE-AN2529001-
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EXECUTIVE SECRETARY'S FIRST SET
 OF INTERROGATORIES DIRECTED TO
 THE SEVIER COUNTY CITIZENS FOR
 CLEAN AIR AND WATER

Pursuant to the Utah Administrative Procedures Act and Rule 33 of the Utah
 Rules of Civil Procedure, the Executive Secretary hereby requests that Sevier County Citizens
 for Clean Air and Water (Sevier County Citizens or SCC) answer the following interrogatories in
 writing and under oath, within thirty days of service. If any additional or different information is
 obtained which will require supplementation or other changes to your answers between the time

of initial answering and trial or hearing, you are directed, pursuant to the rules, to provide such supplementation or other changes to the Executive Secretary and his attorneys.

DEFINITIONS

"Approval order" or "permit" shall mean as those terms are defined in the Utah Environmental Quality Code and state rules, and shall include the Approval Order (AO) issued by the Executive Secretary on October 12, 2004 to Sevier Power Company to construct and operate a coal-fired power plant in Sevier County, Utah, DAQE-AN2529001-04.

The term "document" as used herein means any and all kinds of printed, recorded, written, graphic, photographic or electronic matter (including e-mail, tape recordings and computer data), however printed, produced, reproduced, coded or stored, of any kind or description, whether sent or received or not, including originals, copies, reproductions, facsimiles, drafts, and both sides thereof, and including, but not limited to, all communications; documents; papers; books; accounts; letters; work papers; models; photographs; drawings; sketches; charts; objects; tangible things; correspondence; telegrams; cables, telex messages; memoranda; manuscripts; outlines; graphs; notes; notations; manuals; logs; receipts; notices; drawings; movie or video film; slides; medical records; x-ray film; work sheets; opinions; opinions or reports of consultants; reports or summaries of investigations; cables; publications; charts; plans; brochures; reports or summaries of interviews; work papers; routing slips; intra-office and inter-office communications to, between or among directors, officers, agents or employees; transcripts, minutes, reports and recordings of telephone conversations, interviews or other meetings; affidavits; statements; deposition transcripts; reports; studies; analyses; tests; evaluations; contracts; licenses; agreements; invoices; notebooks; ledgers; journals; books or records of account; summaries of accounts; balance sheets; income statements; questionnaires and surveys; desk calendars; daytimers; appointment books; diaries; telephone logs; sound

recordings; tape recordings; data sheets; computer printouts; data processing input and output computer files; computer programs; computer program coding sheets; microfilms and microfiche; and all other records kept by electronic, photographic, or mechanical means, and things similar to any of the foregoing, regardless of their author or origin.

The term "document" includes the original, any copy that is not exactly identical to the original, and any draft. The term includes each document in the possession, custody or control of or available to SCC, its members, attorneys, agents, experts, consultants or representatives, including each document which has been sent to a file or storage unit or center.

"Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or hazardous air pollutant as defined in the Utah Air Conservation Act and state administrative rules, including Utah Admin. Code R307.

"Executive Secretary" and "Utah Air Quality Board" includes those entities as well as their officers, members, directors, employees, consultants, experts and representatives.

"Permit Condition" means a set of specific requirements, including but not limited to operating parameters and emissions limits, for an Emissions Unit described in a permit or approval order.

"Sevier Power" or "SPC" shall refer to the Sevier Power Company, NEVCO and all their parent or subsidiary entities. "Facility" or "power plant" shall refer to the coal-fired power plant, including all supporting facilities, which is the subject of Approval Order DAQE-AN2529001-04.

"You" or "your" refers to SCC and all its members, officers, employees, agents, contractors, consultants, experts and representatives of those entities or persons.

INSTRUCTIONS

In the event that you wish to assert either the attorney-client privilege or work product doctrine privilege, or both, as to any information or document requested herein, please identify such information or document in writing, including a summary statement of the subject matter, and a description of the basis for the assertion of the privilege.

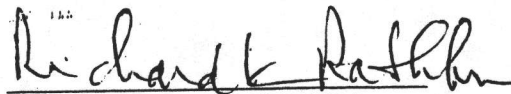
When you identify an individual person or entity, provide an address and telephone number where the person or entity can be contacted. When you identify a document, please include its title, author(s), signatory(s), subject matter and date.

INTERROGATORIES

1. Identify each person answering or assisting in answering these interrogatories, designating the interrogatories each person answered or assisted with.
2. State the name, address and telephone number of each individual likely to have discoverable information supporting your claims, identifying the subjects of the information.
3. Identify, describe or provide a copy of all documents, data compilations and other tangible things in your possession, custody or control which support your claims.
4. Describe in detail all damages and injuries which you claim as the result of the Executive Secretary's issuance of the AO for the power plant, including a description of how each specific AO condition has caused or may cause damages or injuries, along with a calculation of such damages or injuries.
5. Identify all persons whom you may use at trial or hearing to present expert testimony or evidence, and identify all documents, data compilations, reports and other tangible things created, consulted or relied upon by such persons in providing you with expert opinion, consultation or testimony.

6. With regard to any evidence you may present at trial or hearing, state the name, address and telephone number of each witness, separately identifying the witnesses you expect to present and those you may call if the need arises.
7. With regard to any evidence you may present at trial or hearing, identify each document, tangible thing or other exhibit, including summaries of other evidence, separately identifying those that you expect to offer and those that you may offer if the need arises.
8. Identify all statements, whether oral or written, which you have obtained from any person having knowledge of facts relating to the subject matter(s) of this proceeding, including the identity of each person giving a statement, the date, time and place of each statement, the identity of each person taking a statement, the subject matter, the current custodian, and an indication whether the statement was written or oral, recorded (sound or video, etc.) or transcribed.

Dated this 23rd day of August, 2005



RICHARD K. RATHBUN,
USB # 5183
CHRISTIAN C. STEPHENS,
USB # 9068
Assistant Attorneys General

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2005 I caused a copy of the foregoing to be mailed by United States mail, postage prepaid, to the following:

James Kennon
Sevier County Citizens for
Clean Air and Water
146 North Main Street, Suite 27
P.O. Box 182
Richfield, UT 84701

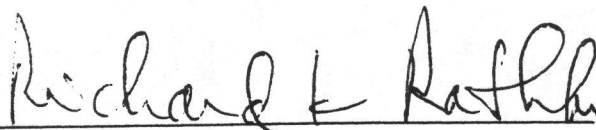
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(via hand delivery)


Richard E. Rathbun

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 Attorneys for the Executive Secretary

BEFORE THE UTAH AIR QUALITY BOARD

SEVIER COUNTY CITIZENS FOR CLEAN
 AIR AND WATER,

Petitioner,

and

SEVIER POWER COMPANY; and the

EXECUTIVE SECRETARY OF THE UTAH

AIR QUALITY BOARD,

Respondents

In the matter of: Sevier Power Company
 Power Plant; Case No.: DAQE-AN2529001-
 04

EXECUTIVE SECRETARY'S FIRST
 REQUEST FOR PRODUCTION DIRECTED
 TO THE SEVIER COUNTY CITIZENS FOR
 CLEAN AIR AND WATER

Pursuant to the Utah Administrative Procedures Act and Rule 34 of the Utah Rules of Civil Procedure, the Executive Secretary hereby requests that Sevier County Citizens for Clean Air and Water (Sevier County Citizens or SCC) produce the documents and other things specified below for inspection and copying within thirty (30) days after service of this request, at the offices of the Utah Attorney General, Environment Division, P.O. Box 140873, 160 East 300 South, Fifth Floor, Salt Lake City, UT 84114-0873, or at such other place to be agreed upon by

the parties or by order of the Hearing Officer. If any additional or different information is obtained which will require supplementation or other changes to your responses between the initial answering and trial or hearing, you are directed, pursuant to the rules, to provide such supplementation or other changes to the Executive Secretary and his attorneys.

DEFINITIONS

"Approval order" or "permit" shall mean as those terms are defined in the Utah Environmental Quality Code and state rules, and shall include the Approval Order (AO) issued by the Executive Secretary on October 12, 2004 to Sevier Power Company to construct and operate a coal-fired power plant in Sevier County, Utah, DAQE-AN2529001-04.

The term "document" as used herein means any and all kinds of printed, recorded, written, graphic, photographic or electronic matter (including e-mail, tape recordings and computer data), however printed, produced, reproduced, coded or stored, of any kind or description, whether sent or received or not, including originals, copies, reproductions, facsimiles, drafts, and both sides thereof, and including, but not limited to, all communications; documents; papers; books; accounts; letters; work papers; models; photographs; drawings; sketches; charts; objects; tangible things; correspondence; telegrams; cables, telex messages; memoranda; manuscripts; outlines; graphs; notes; notations; manuals; logs; receipts; notices; drawings; movie or video film; slides; medical records; x-ray film; work sheets; opinions; opinions or reports of consultants; reports or summaries of investigations; cables; publications; charts; plans; brochures; reports or summaries of interviews; work papers; routing slips; intra-office and inter-office communications to, between or among directors, officers, agents or employees; transcripts, minutes, reports and recordings of telephone conversations, interviews or other meetings; affidavits; statements; deposition transcripts; reports; studies; analyses; tests; evaluations; contracts; licenses; agreements; invoices; notebooks; ledgers; journals; books or

records of account; summaries of accounts; balance sheets; income statements; questionnaires and surveys; desk calendars; daytimers; appointment books; diaries; telephone logs; sound recordings; tape recordings; data sheets; computer printouts; data processing input and output computer files; computer programs; computer program coding sheets; microfilms and microfiche; and all other records kept by electronic, photographic, or mechanical means, and things similar to any of the foregoing, regardless of their author or origin.

The term "document" includes the original, any copy that is not exactly identical to the original, and any draft. The term includes each document in the possession, custody or control of or available to SCC, its members, attorneys, agents, experts, consultants or representatives, including each document which has been sent to a file or storage unit or center.

"Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or hazardous air pollutant as defined in the Utah Air Conservation Act and state administrative rules, including Utah Admin. Code R307.

"Executive Secretary" and "Utah Air Quality Board" includes those entities as well as their officers, members, directors, employees, consultants, experts and representatives.

"Permit Condition" means a set of specific requirements, including but not limited to operating parameters and emissions limits, for an Emissions Unit described in a permit or approval order.

"Sevier Power" or "SPC" shall refer to the Sevier Power Company, NEVCO and all their parent or subsidiary entities. "Facility" or "power plant" shall refer to the coal-fired power plant, including all supporting facilities, which is the subject of Approval Order DAQE-AN2529001-04.

"You" or "your" refers to SCC and all its members, officers, employees, agents, contractors, consultants, experts and representatives of those entities or persons.

INSTRUCTIONS

In the event that you wish to assert either the attorney-client privilege or work product doctrine privilege, or both, as to any document requested herein, then as to each document that is subject to such assertion, you are requested to identify such document in writing, including a summary statement of the subject matter of such document and a description of the basis for the assertion of the privilege.

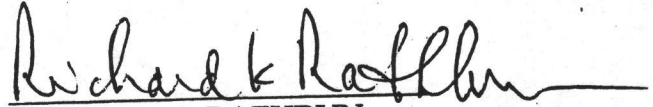
Each document or other thing produced in response to this request and which constitutes computer input or output, including, but not limited to, punch cards, or other cards, tapes, disks or other data compilations, shall be furnished together with the programming instructions and other materials necessary to understand and use it. If readable printouts or forms produced from such cards, tapes, disks or other data compilations are produced, please provide instructions or other written materials sufficient to understand and use such printouts or forms.

REQUESTS FOR PRODUCTION

1. All documents and other tangible things used, referred to, relied upon or reviewed in any way in answering the Executive Secretary's first set of interrogatories directed to SCC.
2. All documents and other tangible things in your possession, custody or control supporting your claims set forth in your Request for Agency Action.
3. All documents and other tangible things supporting your calculation of damages, including materials bearing on the nature and extent of injuries suffered.
4. All documents and other tangible things, including summaries of other evidence, which you may introduce as exhibits at a formal hearing in this matter.

5. All documents and other tangible things written, created, reviewed or relied upon by any expert you either expect to testify or with whom you have consulted in this matter on any of your claims regarding the terms of the AO and the construction and operation of the SPC facility, including the nature and extent of injuries incurred or expected from emissions from the SPC facility and the calculation of damages.

Dated this 23rd day of August, 2005.



RICHARD K. RATHBUN,
USB # 5183
CHRISTIAN C. STEPHENS,
USB # 9068
Assistant Attorneys General

CERTIFICATE OF SERVICE

I hereby Certify that on this 23rd day of August, 2005 I caused a copy of the foregoing to be mailed by United States mail, postage prepaid, to the following:

James Kennon
Sevier County Citizens for
Clean Air and Water
146 North Main Street, Suite 27
P.O. Box 182
Richfield, UT 84701

Fred Finlinson
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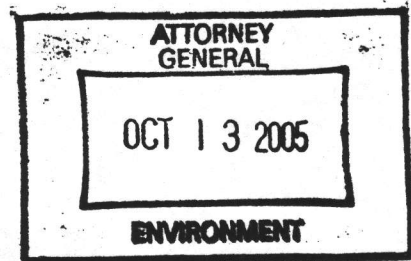
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Sevier County Citizens For
For Clean Air And Water, Inc.
146 North Main Street, Suite 27
P.O. Box 182
Richfield, Utah 84701
Tele: (435) 896-2822



BEFORE THE UTAH AIR QUALITY BOARD

Sevier County Citizens For
Clean Air And Water, Inc.
A non-profit organization

Petitioner

and

Executive Secretary of the Utah
Air Quality Board, and the Sevier
Power Company.

Respondents

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In the matter of Sevier Power
Company Power Plant:
DAQE-AN2529001-04

SEVIER CITIZENS RESPONSE
TO EXECUTIVE SECRETARY
OF THE AIR QUALITY BOARD
MOTION TO COMPEL AND
RESPONSE TO
INTERROGATORIES

COMES NOW the Sevier Citizens responds to the Executive Secretary's Motion to Compel and Interrogatories, which was served on October 3, 2005 and October 4, 2005.

The Sevier Citizens is responding to the request of the Executive Secretary in good faith, as rapidly as we are able. Sevier Citizens were under the impression that one more discovery meeting would be held to further clarify the issues and to find some common ground. That appears not to be the case and SCC is sending

as much of the requested material as possible, considering the time it takes to get things done in a rural area.

ARGUMENT

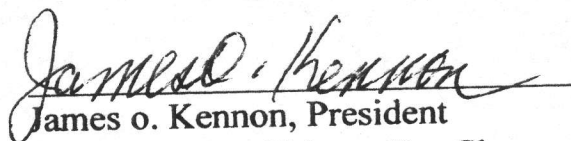
The Information requested in the letters of question that the Executive Secretary contends were received during the AO public comment, contained questions regarding polices of the Department of Air Quality. One of those questions was in regard to the Health Department. Another, ask about the matter of responsibility, which is of great concern to many people in Sevier County.

The other matter was in reference to the 14 issues in our request for agency action. The Executive Secretary stated that those issues were answered in a response served on June 10, 2005. A number of those responses were handled by stating, "No reference is made to AO terms that might have an impact on any listed issue, ". The impacts may come from the lack of terms not listed in the AO.

Conclusion

Sevier Citizens will comply to the very best of their ability with the request of the Executive Secretary. We are working with volunteer people that are attempting to answer questions as best they know how. The deadline set by the Executive Secretary was impossible for our organization to comply with. We are not attorneys and there is a lack of services in our community to make things happen in a faster manner. Mail delivery from Salt Lake varies from two days to a week.

Dated this 11th day of October, 2005


James o. Kennon, President
Sevier County Citizens For Clean
Air And Water, Inc.

CERTIFICATION OF SERVICE

I hereby certify that on the 11th day of October, 2005, I caused a copy of the foregoing to be mailed by United States Mail, postage paid to the following:

Joro Walker
Sean Phelan
Western Resource Advocates
425 East 100 South
Salt Lake City, Utah 84105

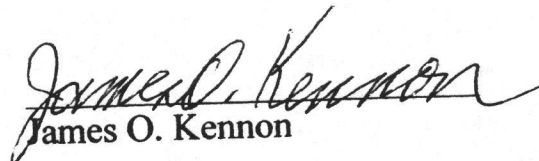
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James O. Kennon